

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **FEB 21 2013**

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a hotel/motel. It seeks to employ the beneficiary permanently in the United States as an operations research analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, a labor certification accompanied the petition. The director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. The director denied the petition accordingly.

In a Notice of Intent to Dismiss (NOID) dated December 19, 2012, the AAO requested evidence to establish the continuing existence of the job opportunity and the applicability of the ETA Form 9089, Application for Permanent Employment Certification to the job offered. Specifically, the ETA Form 9089 certified a job opportunity in Denver Colorado, while the Form I-140 offered the employment in National City, California. Furthermore, there no longer appeared to be any intent or desire by the petitioner, or by Denver Hospitality Group, LLC, to employ the beneficiary in Denver, Colorado since neither the petitioner nor Denver Hospitality Group, LLC currently owns the business in the area of intended employment.

This office allowed the petitioner 30 days in which to respond to the NOID. In the NOID, the AAO specifically alerted the petitioner that failure to respond to the NOID could result in dismissal of the appeal. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). More than 30 days have passed and the petitioner has failed to respond with evidence to establish the continuing existence of the job opportunity and the applicability of the ETA Form 9089.

Thus, the appeal will be dismissed as abandoned. *See also* 8 C.F.R. § 103.2(b)(13).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.